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National report on the violation of human rights of gay men, other MSM and trans people, in particular right to health in the Republic of Macedonia 2017



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Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ECOM	Eurasian Coalition on Male Health
HIV	Human Immunodeficiency Virus
LGBT	Lesbian, Gay, Bisexual, and Trans people
MSM	men who have sex with men
NGO	non-governmental organization
PLWH	people who live with HIV
SOGI	sexual orientation and gender identity
Trans	people who have a gender identity or gender expression that differs from their birth assigned sex
UN	United Nations Organization

Methodology used to collect the cases of Human Rights Violations

The tools used to collect the cases of human rights violation was provided by the Eurasian Coalition on Male Health (ECOM) in a form of Protocol of the national report on the violation of human rights within the ECOM Regional program "Right to Health". According to this Protocol, two approaches were used for keeping record of human rights violations:

1. Interview with a victim;
2. Examination and attaching to the interview data the relevant materials.

Regarding the second approach and specifically adapted for the cases that were reported, the following materials and actions had been used: medical statements and medical documents, meetings with the perpetrators of the specific rights in order to obtain specific documents that were retained by the perpetrator, interview of an eye-witnesses, negotiations with the perpetrator in order to reduce harm of the wrongful act, sending applications for free access to information of public interest in order to obtain more information and other.

National Health Legislation

NATIONAL HEALTH LEGISLATION

- Constitution of the Republic of Macedonia
- Bylaw for the way on issuance of visas for aliens, continuance and shortening of validity, revocation and cancellation of visas and the form for visas and evidence in the Republic of Macedonia
- Criminal code of the Republic of Macedonia
- Law on security of blood supply of the Republic of Macedonia
- Bylaw for the type of information that should be given to the blood donor regarding the blood donation, is requested from the blood donor, criteria for eligibility for blood donor and other measures regarding the blood donation in the interest of the blood donor and form and content of the written consent for blood donation of the Republic of Macedonia
- Law on associations and foundations of the Republic of Macedonia
- Strategy for cooperation of the government with civil society (2012-2017)
- National program for protection of the population from HIV/AIDS in the Republic of Macedonia for 2016
- Law on associations and foundations of the Republic of Macedonia
- Strategy for cooperation of the government with civil society (2012-2017)
- National program for protection of the population from HIV/AIDS in the Republic of Macedonia for 2016
- Law on prevention and protection against discrimination of the Republic of Macedonia
- Law on labor relations of the Republic of Macedonia
- Law on health protection of the Republic of Macedonia

Analysis of the Republic of Macedonia law and practice shows that some crucial parts of the national legislation corresponds to requirements and obligations of the international and European human rights documents.

Legislation does not impose restrictions on MSM in blood donation. Liability for HIV transmission is not explicitly differentiated in the Criminal Code, but it is included under the term "liability for transmission of infectious diseases". Macedonian legislation also provides criminal liability for spreading material, promoting or stimulating hatred, discrimination or violence, based on sex, and violation of basic human rights and freedoms acknowledged by the international community and based on difference in sex, which is very significant step towards LGBT rights protection.

However many gaps in the legislation and absence of proper regulations still lead to violation of PLHIV, MSM, other gays and trans people's rights. Explicit prohibition of discrimination on the basis of sexual orientation and/or gender identity is not provided in any law, except Law "On Labor Relations" and Law "On Health Protection". Keeping in mind prevalence of stereotypes and prejudice against lesbian, gay, bisexual, transgender and intersex persons in the Republic of Macedonia, it is very important to have explicit legislative rules that prohibit any form of discrimination on the grounds of sexual orientation and/or gender identity.

Legal practice also does not provide proper law enforcement in this sphere." на "Legal practice shows that there is not proper law enforcement in this sphere. Despite of criminal

liability for offences against basic human rights based on the difference in sex, provided by the law, most of such cases were not properly investigated. This contradicts with 29th principle of the Yogyakarta Principles about appropriate, accessible and effective criminal, civil, administrative and other procedures and monitoring mechanisms to ensure the accountability of perpetrators for human rights violations, related to sexual orientation or gender identity as well as prompt and thorough investigation of violation cases.

The situation can be effectively changed by establishing investigation procedures controls and teaching enforcement agencies to prevent and investigate offences in this field.



Narrative Report on the Cases of Violation

Cases reported by Stronger Together – Association for support of people living with HIV

CASE 1.

1.1. Description of the case with prejudice indicators

On 22 December, 2017, a client (homosexual man, HIV positive), on demand of his psychiatrist, attended a psychologist office in a state hospital in order to obtain a psychological test. His psychiatrist needed the results of a psychological test in order to know which dose of therapy should prescribe to the client. At the psychologist's office he was asked why he needs the test, but then the psychologist insisted to know why the man needs health services from a psychiatrist. The man explained that he had anxiety and depression. The psychologist wasn't content with the answer and asked again what causes that anxiety and the depression. The client told her that he was diagnosed with HIV. Additionally, he mentioned that he is concerned because his mother was diagnosed with schizophrenia and that this could be genetically transferred to him. The psychologist seemed very surprised by the answer and asked how he got infected with HIV. The client said that he was infected through sexual relations with another man. Looking for an excuse for further questioning, the psychologist said that she needed this information in order to give him more accurate results from the test. Then she asked him how he knew he was a homosexual. The man answered that he has been always attracted to men. She asked him whether he ever had sex with a woman. Getting a negative answer, she went on saying that she is a psychologist from the "older generation" and that she cannot imagine how people could have same sexual relations because that was not natural. She said that she believed some people had hormonal disbalances (and therefore that made them attracted to the same sex), but she said that people like him (the client) were having sexual relations with the same sex just to be fashionable, just to stand out off the crowd and that they are fooled by some organizations who work in that regard. And she added: "In the end what they get is AIDS as a punishment. But you are having sexual relations with men now, because your mother was ill while you were a boy and didn't pay any attention to you when you were a little boy."

1.2. Source of the information

The victim.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following rights were restricted/violated:

-Constitutional **right to health care** i.e. obtaining quality healthcare with absence of any kind of mental abuse with total respect for the dignity of patient's personality and in his/her best interest. (Article 39 of the Constitution of R. Macedonia in correlation with Article 2 and 3 of the Law on protection of patient's rights)

-the right to obtain a psychological test by a professional, objective, competent and efficient psychologist who will respect the client's personality and human dignity (Article 15 of the Law on practicing psychology as an occupation in correlation with the Ethical Codex of psychologists)

1.4. The ground of discrimination.

This is a case of indirect discrimination (forbidden by Article 6, par. 2 of the Law on prevention and protection against discrimination of the R. Macedonia). At the same time, this is also a typical case of intersectional discrimination (discrimination that arises from the specific combination of two or more grounds of discrimination): sexual orientation and health status (HIV positive status).

1.5. Consequences for the victim.

Non-pecuniary damage, stress, violation of human dignity, worsening of mental health, not giving a proper quality health service.

1.6. Measures taken and their results.

The client obtained legal support from Stronger Together - NGO.

Procedures are pending for a:

- complaint to the Commission for prevention and protection against discrimination and the Ombudsman
- complaint to the Chamber of psychologists

CASE 2.

1.1. Description of the case with prejudice indicators

On 09.12.2016, a client (HIV positive, homosexual man) received a complaint against him for unpaid debt towards the Clinic for Infectious Diseases and Febrile Conditions. Attached to the complaint, a receipt with a report from the Clinic was also sent, as a proof for the debt. This receipt contained personal data about the patient: diagnosis (according the ICD), HIV status, therapy and other personal data. These files were delivered on the home address of the client and in an open envelope. Hence the client was not at home, the envelope was given to his mother. Macedonian law allows delivering mail to close family members who live on the same address with the recipient. Moreover, the debt was fictive, i.e. it claimed costs for health services which are covered by a special program funded by the Fund for tuberculosis, malaria and AIDS. Shortly after this, it was discovered that around 15 patients from the Clinic received complaints in the same way and for the same services

1.2. Source of the information

The victim.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following rights were restricted/violated:

- Constitutional right to health care (Article 39 of the Constitution of R. Macedonia in correlation with Article 2 and 3 of the Law on protection of patient's rights)
- Constitutional right to respect and protection of the privacy of personal and family life and of dignity and repute. (Article 25 of the Constitution of R. Macedonia in correlation with Article 25 of the Law on protection of patient's rights, Article 34 par. 4 of the Law on personal data protection and Article 25 of the Law for the protection of the population from infectious diseases)

1.4. The ground of discrimination.

The victim was subject to indirect discrimination based on health status.

1.5. Consequences for the victim.

Possible pecuniary damage, if the judicial procedure wasn't stopped, possible forced disclosure of HIV status to family members which could lead to excommunication from the family and friends, job loss etc.

1.6. Measures taken and their results.

The client asked for legal support from Stronger Together NGO. The NGO immediately sent a written warning to the Clinic about its unlawful acts and violations of patients' right to health and privacy. A meeting with the financial director of the Clinic was organized shortly after. Under threat of filing a lawsuit against the Clinic, an application in the Commission for prevention and protection against discrimination and involvement of the media, the meeting resulted with withdrawal of all the procedures against all patients who were sued for debt arising from received health services which should have been covered by the special program funded by the Fund for tuberculosis, malaria and AIDS and not by the patients..

CASE 3.

1.1. Description of the case with prejudice indicators

On 04.08.2014, the client (person living with HIV) went to a state hospital to obtain a medical intervention for appendicitis. After the surgery, he was told that he had been tested for HIV and that the results turned out to be positive. He was moved to a special room with a sign on it stating "forbidden entrance", and isolated from other patients. The health and technical staff entered his room in specially protected uniforms, wearing face masks and gloves. During the four days spent in the hospital, his room hasn't been cleaned not even once. A medical technician during changing the infusion, dropped the infusion needle and the client asked her to change it, but she refused, saying that he was already infected and therefore doesn't need clear needles. Another medical technician kept calling the patient – "the one with AIDS" and shortly after that his HIV status was disclosed to all the employees in the hospital and to the clients' family.

1.2. Source of the information

The victim.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following rights were restricted/violated:

- Constitutional right to health care (Article 39 of the Constitution of R. Macedonia in correlation with Article 2 and 3 of the Law on protection of patient's rights)
- Constitutional right to respect and protection of the privacy of personal and family life and of dignity and repute. (Article 25 of the Constitution of R. Macedonia in correlation with Article 25 of the Law on protection of patient's rights, Article 34 par. 4 of the Law on personal data protection and Article 25 of the Law for the protection of the population from infectious diseases)

1.4. The ground of discrimination.

The ground for discrimination is the health status, i.e. HIV positive status

1.5. Consequences for the victim.

The client was excommunicated from his family and friends and had to move abroad.

1.6. Measures taken and their results.

- complaint to the Ombudsman, complaint to the Commission for prevention and protection against discrimination, complaint to the Commission for personal data protection, complaint to the State sanitary and health inspectorate, all filed on 16.10.2014.
- request for free access to information of public interest from the State hospital regarding internal procedures for treatment of patients with HIV. The request was addressed from the hospital only partially.
- On 27.04.2017, the Commission for prevention and protection against discrimination found that the treatment the client received in the hospital was act of indirect discrimination.
- Due to the reason that the case had severe consequences for the victim and he was forced to move abroad, he is against any form of further action regarding this case.

Cases reported by Equality for Gay and Lesbian NGO

CASE 1.

1.1. Description of the case with prejudice indicators.

The client (homosexual man, HIV positive) obtained a medical service from a private dentist. At that time, he was not diagnosed with HIV. In July 2017 he went to the same dentist in order to receive another medical service but since he was now diagnosed as HIV positive, he disclosed his status to the doctor. The dentist deliberately refused to perform the necessary medical service. He said that he did not have the appropriate equipment and that the client should ask some other dentist for this specific case.

1.2. Source of the information

The victim.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following rights were restricted/violated:

Constitutional right to health care (Article 39 of the Constitution of R. Macedonia in correlation with Article 2 and 3 of the Law on protection of patient's rights)

1.4. The ground of discrimination.

Considering the situation described, human rights restriction/violation was based on the victim's health condition (HIV positive status).

1.5. Consequences for the victim.

Non-pecuniary damage, violation of dignity.

1.6. Measures taken and their results.

The client was not willing to start any procedure.

Cases reported by Association for Support of Marginalized Workers STAR-STAR Skopje NGO

CASE 1.

1.1. Description of the case with prejudice indicators.

The client (transgender person, sex worker) was a member of the local election commission during the election process. On the day when the voting took place, 15.10.2017, during the break, the client was harassed by 3-4 young policemen who were on duty – securing the place for voting, they were constantly looking at him, laughing and making comments about his appearance. The client warned the chief of the group of policemen that he was being harassed and that he would like to report that officially. The chief policeman in rude and indecent manner responded that it is not his business, saying: "You can report wherever you want, I don't care. I am the law here and not you." On request of the client, he denied to show a legitimation. After that, the policemen were constantly observing the client.

1.2. Source of the information

The victim.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following rights were restricted/violated:

Constitutional right to respect and protection of the privacy of personal and family life and of dignity and repute. (Article 25 of the Constitution of R. Macedonia)

1.4. The ground of discrimination.

Considering the situation described, human rights restriction/violation was based on the victim's gender.

1.5. Consequences for the victim.

Non-pecuniary damage, violation of dignity, stress, fear, trauma.

1.6. Measures taken and their results.

The client obtained legal support from a NGO. A complaint has been submitted to the Ombudsman. On 28.11.2017, the Ombudsman office reported that they considered that there is a violation of rights and they have sent a request for initiating a procedure against the policemen for determination of criminal responsibility for criminal act described in Article 143 of the Criminal Code of the R. Macedonia: "Harassment on duty" to the Public prosecutor office.

CASE 2.

1.1 Description of the case with prejudice indicators.

The client (transgender person, sex worker) received a call from a potential client who wanted to ask for a meeting in order to receive sex services for him and two other friends. The client set up three meetings. Three men showed up together and received the services from the client. The third man then showed a police badge and said that he was a policeman. He asked for a service free of charge. The client refused, but was forced to have sexual relations without a condom. Then he took all the client's money and left.

1.2. Source of the information

The victim.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following right was restricted/violated:

Constitutional right to respect and protection of the privacy of personal and family life and of dignity and repute (Article 25 of the Constitution of R. Macedonia)

Constitutional right to physical and moral dignity (Article 11 of the Constitution of R. Macedonia)

1.4. The ground of discrimination.

The ground of discrimination is client's profession in correlation with gender. This is intersectional discrimination.

1.5. Consequences for the victim.

Stress, trauma, fear that other policemen will come to ask for free services again.

1.6. Measures taken and their results.

The client refused to take any measure because of fear that will be arrested for working as a sex worker and her identity would be disclosed.

CASE 3.

1.1. Description of the case with prejudice indicators.

The clients (3 transgender people) were passing by the Old bazar when unexpectedly one of them was attacked by an unknown person. The client immediately went to hospital to ask for a medical help and the attacked client received medical assistance. In meantime, the police was contacted to come and make an official record of the case. The other two clients went outside to smoke when one of the policemen came after them and took a picture of them with his telephone. Afterwards, he sent the pictures to his colleagues and the pictures together with inappropriate comments were published on social media.

1.2. Source of the information

The victims.

1.3. Violated/restricted rights.

As a result of the above-mentioned circumstances, the following right was restricted/violated:

Constitutional right to respect and protection of the privacy of personal and family life and of dignity and repute (Article 25 of the Constitution of R. Macedonia)

1.4. The ground of discrimination.

The ground of indirect discrimination is based on the victim's gender.

1.5. Consequences for the victim.

Stress, trauma, fear that they would be recognized by other people and be subject to public insult.

1.6. Measures taken and their results.

The client was not willing to initiate any procedures.



Conclusions and Recommendations

- **TOTAL NUMBER OF CASES: 7**
- **MOST WIDE SPREAD VIOLATIONS:**
 From the ongoing documenting of violations of human rights of MSM and trans people can be concluded that MSM and trans people are facing different types of violations. However, the documented cases show that even though proper legal provisions that protect human rights of every citizen without discrimination do exist in the national legislation, they are constantly violated by two of the most important public institutions and that is the health institutions and the police. The most wide spread violations in this regard is the deprivation of the right to health and the human dignity.
- **WHO IS THE VICTIM IN MOST CASES:**
 This particular analysis refers to gay men and other MSM and trans people, but in concentrates on MSM and trans gender people who are either HIV positive or marginalized workers. Therefore, the victim's sexual orientation/gender always correlates with health status/profession.
- **WHO IS THE PERPETRATOR IN MOST CASES:**
 In the reported cases the perpetrators are health workers and policemen.
- **REASONS FOR FAILURE TO CLAIM ONE'S RIGHTS/RELUCTANCE TO PROTECT ONE'S RIGHTS:**
 Several reasons for failure to claim one's rights can be detected. First of all, there is high level of stigma and prejudice that exist in the society which is relatively traditional and conservative, especially in the small towns and villages. This causes huge fear and discourages the victims to report violations. Additional factor is that the Republic of Macedonia is a small country with total population of approximately 2 million people and information are very easily shared among the people. This fact additionally discourages MSM and trans people to disclose any information. Last, but not the least is the high level of mistrust in the judicial system and other state institutions that should protect human rights due to political influences of the former conservative government. Although some positive changes can be seen in the capacities and knowledge of the state institutions when dealing with antidiscrimination cases, especially antidiscrimination towards LGBT, still the practice shows that even when they recognize discrimination in the cases, penal, punitive or disciplinary measures are hard to impose after the end of the procedure. This in a certain way also influences people's perception about the efficiency and final result of the procedures against discrimination.

RECOMMENDATION ON HOW TO IMPROVE THE SITUATION ON NATIONAL LEVEL:

- Stigma and prejudice must be fought against through education, both formal and non-formal, public campaigns and specifically tailored trainings for key stakeholders.
- Community based NGOs have to provide sustainable psychological and legal assistance to members of marginalized communities.
- NGOs must insist on personal data protection in every case.
- To continue work with law enforcement (educate tolerance and nondiscrimination).
- Provide sole information on hate crimes based on homophobia and transphobia.
- To work with media, to cover in appropriate manner any similar cases, or the situation with LGBT in general (on hate crimes for instance).
- Include in study program of medical personnel compulsory studies on stigma and discrimination based on SOGI.
- Include in study program of law enforcements compulsory studies on stigma and discrimination based on SOGI.

